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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,770	12/14/2000	A. B. Barajas	848	8868

7590

04/04/2002

Law Offices of John D. Gugliotta, P.E., Esq.  
202 Delaware Building  
137 South Main Street  
Akron, OH 44308

EXAMINER

PETRAVICK, MEREDITH C

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/736,770

Applicant(s)

BARAJAS, A. B.

Examiner

Meredith C Petravick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Willis.
3. Claims 1, 2, 6, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Eads.

Eads discloses a rake having a rake head with a solid tine section (band section 44), a handle attachment means (24,26,28), the head having a generally triangular silhouette and the tine section is downwardly curved radial surface terminating the base end, and reinforcing ribs 38 and 40 are formed along the upper surface of the rake head.

The examiner takes official notice that rake handles formed from wood, metal, plastic or fiberglass is well known.

4. Claims 1, 2, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Sargeant.

Sargeant discloses a rake having a rake head with at least one tine that is solid, a handle attachment means, the head having a generally triangular silhouette and the tine section is downwardly curved radial surface terminating the base end.

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The examiner takes official notice that rake handles formed from wood, metal, plastic or fiberglass is well known.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sargeant in view of Clark.

Sargeant is discussed above. However, the threaded connection between the rake head and the handle are not specifically shown.

Clark teaches a male threaded handle which connects to a female threaded aperture for attachment thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to attach the head and handle with threads as seen in Clark to head and handle of Sargeant since Clark teaches that threading is one of many quick ways to attach a rake head to a handle.

7. In the alternative, claims 1, 2, 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sargeant in view of Willis.

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Sargeant discloses a rake having a triangular head with a handle attached thereto.

However, a solid tine section to the degree as disclosed is not shown.

Willis teaches a solid tine section on a rake similar to that of the present invention.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tine structure as seen in Willis to the rake of Sargeant since doing so would be merely substituting well known tine sections with another. Applicant should take note that the rake of Willis is capable of raking leaves and that "leaf" rake is considered intended use and not given patentable weight.

The examiner takes official notice that rake handles formed from wood, metal, plastic or fiberglass is well known.

8. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sargeant in view of Willis as applied to claims 1, 2, 6-9 above, and further in view of Clark.

Sargeant and Willis are discussed above. However, the threaded connection between the rake head and the handle are not specifically shown.

Clark teaches a male threaded handle which connects to a female threaded aperture for attachment thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to attach the head and handle with threads as seen in Clark to head and handle of Sargeant since Clark teaches that threading is one of many quick ways to attach a rake head to a handle.

***Response to Arguments***

9. Applicant's arguments filed 3/13/02 have been fully considered but they are not persuasive.

Claims 1-2, 6-7 and 10 remain rejected under 35 U.S.C. 102(b), as described in detail above, as being anticipated by Willis, Eads and/or Sargeant. Claims 3-5 and 6-9 remain rejected under 35 U.S.C 103(a) as being unpatentable over Sargeant in view of Clark and/or Willis.

In response to the rejection of the claims under 35 U.S.C. 102(b), applicant states, "In undertaking to determine whether one reference anticipates another under 35 U.S.C. 102(b), a primary tenet is that only the **CLAIMED** designs are to be compared. Many differences exist between **the design claimed in Eads or Sargeant** and the currently claimed designs."

Contrary to applicant's assertion, 35 U.S.C. 102(b) does not require that only the claimed invention in the prior art be compared with claims of the application. Further, 35 U.S.C. 102(b) does not require that prior art be a patent, but could be a publication that was printed more than 1 year before the filing date of the application. For the exact wording, please see the quotation of 35 U.S.C. 102(b) above.

In response to the rejection of the claims under 35 U.S.C. 103(a), applicant argues that the combinations of the references are improper hindsight reasoning.

The examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not

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include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Therefore, for the reason's stated above, the claims remain rejected as described in detail above.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

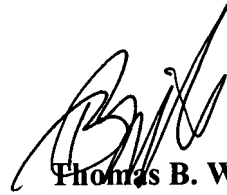
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith Petravick whose telephone number is 703-305-0047. The examiner can normally be reached on Monday-Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-305-3597.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

MCP  
April 1, 2002